which it is undesirable to make any pronouncement until the circumstances occur which give rise to them. It is not suggested that any of the expenditure particularized in the schedule to the summons was made in breach of trust or results in fact in accumulation. Their Lordships do not regard the form of the second declaration in Pedlow J.'s judgment as happily worded. They think that it would be better to confine the reference to the Accumulations Act 1800 to a declaration to the effect that the provisions of the Accumulations Act 1800 do not operate to preclude the payment out of income of the expenditure specified in the schedule to the summons.

In the view that their Lordships take of the matter, there is (as indeed all the Judges in the Court below appear in substance to agree) no need to make any pronouncement on the question of how far the existence of the order made on the 1926 summons might have operated to preclude the Court from making a declaration inconsistent with that order.

As regards the costs of the matter before Pedlow J. no objection has been or can in their Lordships' view properly be made to the terms of his Lordship's order relating to them. In the Court of Appeal certain costs were thrown upon the appellant. In all the circumstances of the case their Lordships think that all the costs of that appeal, including the appellant's, may properly be ordered to be paid by the trustees out of income; and their Lordships take the same view as to the costs of all parties before their Lordships' Board.

Their Lorships will humbly advise His Majesty that the first three paragraphs of the order of Pedlow J. be discharged and that the following declarations be made in lieu of those paragraphs namely:—

1. That upon the true construction of the above mentioned settlement the whole of the expenditure specified in the schedule to the summons should be charged to income exclusively.
2. That the provisions of the Accumulations Act 1800 do not operate to preclude the payment of the said expenditure out of income.
3. That the trustees of the settlement are not entitled to recoup income out of corpus in respect of the said expenditure.

and also that so much of the order of the Court of Appeal as orders the plaintiffs to pay the costs of the respondents in that Court should be discharged and that in lieu it be ordered that the trustees do retain and pay out of the income of the settled estate the costs of all parties of the appeal to that Court the costs retained by the trustees to be taxed as between solicitor and client and the costs of the other parties on the higher scale.

The costs of all parties of the appeal to His Majesty in Council (those of the trustees to be taxed as between solicitor and client) will be ordered to be retained and paid by the trustees out of the income of the settled estate.

Order accordingly.

F. M. S. REPORTS.

PUBLIC PROSECUTOR vs. NG. CHONG.

[App. Crim. Juris. (Terrell, Ag. C.J., F.M.S., McElwaine, C.J., S.S. and Aitken, Ag. J.A.) May 24, 1941]

Road Traffic Enactment, Section 116 (1) — Making statement for the purpose of obtaining a licence, knowing it to be false — Person liable only if he is aware of the statement which he is charged with making.

The respondent applied for a renewal of his licence to drive a public vehicle and to obtain the renewal he had to sign an application form. He did not read or write English, and therefore asked a clerk of the company which employed him to fill in the form for him. The answer to a question asking whether he had been convicted of any offence since his last application, was given as "No". The respondent had in fact been twice convicted of offences connected with the driving of motor vehicles. He was charged under Section 116 (1) (a) of the Road Traffic Enactment which so far as material reads "If any person for the purpose of obtaining the grant of any licence to himself, makes any statement which to his knowledge is false, he shall be liable on conviction to a fine of one thousand dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment."

Held, by the Court of Criminal Appeal (Terrell, Ag. C.J., F.M.S. and McElwaine, C.J., S.S., Aitken, Ag. J.A. (dissenting)), that in a prosecution under Section 116 (1) of the Road Traffic Enactment, it must not only be proved that the statement was false, but also that it was consciously made and known to be false. Before a Magistrate can convict, he must be satisfied that the accused was aware of the statement which he was charged with making.

Cases referred to:—

(1) *P. P. vs. Sin Lee Yok* (1940) M.L.J. 40; (1939) F.M.S.L.R. 112.
(2) *R. vs. Dacey* 27 Cr. A. Reports 86.
(3) *Dickins vs. Gill* (1896) 2 Q.B. 310.
(4) *Bank of New South Wales vs. Piper* (1897) A.C. 383.

(5) *R. vs. Woodrow* 15 M. & W. 404.

(6) *Derbyshire vs. Houliston* (1897) 1 Q.B. 772.

(7) *Goonatillake vs. P. P.*, Johore 5 M.L.J. 47.

(8) *Ocean Accident and Guarantee Corporation Ltd. and another vs. Cole* (1932) 2 K.B. 100.

REFERENCE under Section 53 of the Courts Enactment.

J. F. Draper for the Public Prosecutor.

R. Ramani for the appellant.

The facts and arguments sufficiently appear from the judgments.

Terrell Ag. C.J. F.M.S.—This is in effect an appeal from a magistrate which, under the provisions of section 53 of the Courts Enactment (as amended in 1938) the Public Prosecutor can by a request addressed to the Registrar *require* the Court of Criminal Appeal to hear. It is noticeable that the Public Prosecutor is not required to certify that the decision involves a point of exceptional public importance, or that it is desirable in the public interest that the Court of Criminal Appeal should determine an appeal from a magistrate. On the contrary, the section is so worded that the Public Prosecutor has been empowered by the legislature entirely at his own discretion to give directions to the highest Court in the Federated Malay States. So far as I am aware, such legislation is without precedent in the British Empire and its Dependencies, where the dignity and independence of the Judiciary have always been considered matters of the most paramount importance. I would refer by comparison to the provisions of section 1 (6) of the Criminal Appeal Act of 1907 where the Attorney General can give a certificate permitting the Public Prosecutor to prefer an appeal from the Court of Criminal Appeal to the House of Lords. No power is given to the Attorney General to direct or require the House of Lords to hear it, and it is to my mind extraordinary that such a provision should be considered desirable in the Federated Malay States.

Under section 44 of the Courts Enactment relating to the judgment of the Court of Appeal in its criminal jurisdiction, the Court is required to give a single judgment, unless the Court directs to the contrary. In view of the fact that the other members of the Court are not agreed, I certify that the Court is of opinion that the question involved in this appeal is a question of law upon it would be convenient that separate judgments should be pronounced.

Before dealing with the substance of this reference, there is still a further matter upon which I feel it my duty to comment. It is clear that the very point upon which the Court of Appeal is now required by the Public Prosecutor to give its decision was in effect decided by Mr. Justice Cussen in *P. P. v. Sin Lee Yok*[1]. There is no other reported judgment of the Supreme Court conflicting with this decision, and the Court was informed by Mr. Draper, who represented the Public Prosecutor before us, that the real object of the reference to us was to reverse the decision of Mr. Justice Cussen. Mr. Draper was thereupon asked why no appeal had been lodged against Mr. Justice Cussen's decision, under the provisions of section 45A. (This provision was also introduced in 1938, and gives the Public Prosecutor the right to lodge a second appeal to the Court of Appeal from a judge who has determined a Magistrate's Appeal). In reply to the Court, Mr. Draper with engaging frankness stated that it was the intention of the Public Prosecutor's department that it should not be reported. By some accident, however, it had found its way into the Law Reports, and accordingly the Public Prosecutor had thought of the present reference as a means of getting rid of a decision which was not in accordance with the predelictions of his department.

It appears, however, that the Public Prosecutor's department was more successful in the case of another decision of the Supreme Court, referred to in a judgment of the learned First Magistrate, Kuala Lumpur (in K.L. Traffic Summons No. 919/40), which was also before us in the course of the present Court of Appeal (Sel: Cr: Reference 1/41). This was a decision of Mr. Justice Raja Musa in a N.S. Mag: Appeal, involving the construction of Rule 56 made under the Road Traffic Enactment. The learned Judge, contrary to the submissions of the prosecution, decided that the word 'permits' implies some knowledge. This decision was never reported. Mr. Draper, who also appeared for the Public Prosecutor upon this reference, however, informed the Court, with apparent regret, that a certain number of copies of the judgment were 'floating about', and one of them must have found its way into the hands of the First Magistrate, Kuala Lumpur. Mr. Draper expressed the anxiety of his department lest, if Mr. Justice Raja Musa's judgment were reported, it might be brought to the notice of magistrates, and even worse, they might follow it. From these remarks it may safely be inferred that prosecuting officers would

not of their own accord bring the judgment to the attention of magistrates.

I must of course accept the statement of a responsible officer who represented the Public Prosecutor before us, but I cannot allow the state of affairs disclosed to pass without comment. The judgments of the Supreme Court are binding on all magistrates, and it is the duty of the prosecuting officer to put all the facts clearly and fairly before the Court, and particularly the law applicable to the case. It is absolutely contrary to the etiquette of the profession that a relevant decision should be deliberately withheld with the object of securing a conviction. I sincerely hope that it will never again be necessary for me to call attention to the principles which have always guided the conduct of prosecutions under English criminal law, and which are in future to be observed in all the Courts of the Federated Malay States. Perhaps it is hardly necessary to call attention to the right of the Court to refuse audience to prosecuting officers who disregard their obligations towards accused persons, and their duty to the Court.

Having dealt with these preliminaries, I can now approach the subject matter of the reference. I have had the opportunity of reading the very careful judgments of the Chief Justice of the Straits Settlements, who supports the decision of the Magistrate, and that of Aitken Ag. J.A., who is of opinion that it should be reversed. It is unnecessary for me to recapitulate all the facts or the authorities which are fully dealt with in those judgments. I agree in substance with the judgment of the Chief Justice of the Straits Settlements.

It appears to me that there is little practical distinction between the expressions 'knowingly makes a false statement' and 'makes a statement knowing it to be false', the latter being the words of section 116 (i) of the Road Traffic Enactment. If there is any distinction, the former is more favourable to the prosecution, and reference may be made to the case of *Dacey*[2]. In that case the accused was charged with "knowingly having in his possession certain explosives" etc. It was held that the word 'knowingly' referred to the possession only, and that it was not necessary to prove that the accused knew that they were explosives, if in fact they were explosives. Mr. Draper relied on this case for his argument that in section 116 (i) the knowledge only related to the falsity of the statement and that the making of the statement, if false, involved an absolute liability. The fallacy in this argument is that 'making' necessarily presumes a conscious act. This is shown very clearly in the judgment of Collins J. sitting in the Divisional Court, in *Dickins v. Gill*[3].

This case dealt with an offence under section 7 (a) of the Post Office (Protection) Act 1884. Collins J. says:—

> "It (the section) begins by saying 'a person shall not make'—that is an absolute prohibition against making; then it introduces the word 'knowingly' with respect to 'uttering'; because it is something that might be done quite innocently; it is therefore necessary to introduce the word 'knowingly' in that case, whereas it is not necessary in the case of 'making', which in itself involves a conscious act on the part of the person who does it."

In a prosecution under section 116 (i) of the Enactment, therefore, it must not only be proved that the statement is false, but also that it was consciously made. If on the facts found by the Magistrate, he is not satisfied that the accused was aware of the statement which he is charged with making, he must obviously be acquitted. The section does not say that he is guilty if he puts his signature to a statement, whether or not he is ignorant of its contents. In civil matters a person is not liable for a document to which he has appended his signature, if he was under the impression that it was quite a different document that he was signing. An attempt therefore has been made to put a person's criminal liability higher than his civil liability under similar circumstances. Such a liability cannot be imposed except in the clearest and the most unequivocal terms.

In my opinion, therefore, the judgment of Mr. Justice Cussen in *P. P. v. Sin Lee Yok* was correct, and the acquittal should be upheld. The facts of the present case were not pressed upon us, and in any case I consider that a reference by the Public Prosecutor under section 53 of the Courts Enactment should be confined to important questions of law.

It was urged by Mr. Draper that the effect of Mr. Justice Cussen's decision was to render nugatory the protection to the public contemplated by the Road Traffic Enactment and the rules made thereunder. This argument has little weight, as it is the duty of the Courts, after giving due consideration to the general intention of the legislature, to interpret the Enactment and the Rules as they are, whatever the consequences. I would point out however that there would not be the slightest difficulty in requiring by rule that the declaration which has to be made by an applicant for a licence to drive a public service vehicle be made before an official of the Transport Board, or a Justice of the Peace, or some other responsible

person, the witness being required to add his certificate that the applicant fully understood each and every question in the declaration. If elementary provisions of this kind are from inadvertence or otherwise omitted from the rules, it is not for the Courts to fill the gaps.

McElwaine C.J., S.S.—The respondent, who was licensed to drive a public service vehicle under the Road Traffic Enactment 1937, applied for a renewal of his licence. To obtain this renewal it was necessary for him to sign an application form on the back of which were a series of seven questions to which he had to give answers on the form.

The form was in the English language and the respondent being unable to read or write English, asked a clerk of the Selangor Omnibus Co., which employed him, to fill in the form for him. According to the prosecution evidence, the clerk read out the questions to the respondent and recorded his answers. This clerk filled in the forms for about twenty drivers.

One of the questions, No. 7, on the form asked whether, since his last application for a licence he had been convicted of any offence. This question was answered "No". The respondent had in fact been twice convicted of offences connected with the driving of motor vehicles.

The respondent gave evidence on oath that the form was not read over to him, and the Magistrate acquitted the accused saying "from the evidence as a whole I have very grave doubts as to whether the document (i.e. the application form) was signed by defendant knowing fully what was therein written in reply to each question. I am bound by the decision in Criminal Appeal 6/39". The case referred to *P. P. v. Sin Lee Yok*[1].

This appeal has not been argued on the basis that on the evidence it was unreasonable for the Magistrate to have "grave doubts". It was argued on general principles and in particular it was desired that this Court should overrule *P. P. v. Sin Lee Yok*.

The respondent was charged under section 116 (1) (a) of the Road Traffic Enactment, 1937, which, so far as material, reads: "If any person for the purpose of obtaining....the grant of any licence.... makes any statement or declaration which to his knowledge is false....he shall be liable on conviction ...."

There is no question that the respondent knew he had been convicted and that if he knew question 7 had been asked, and answered 'no', that was a statement which to his knowledge was false.

The case was argued on the assumption that the respondent's evidence was true.

Mr. Draper's proposition was that accused made a statement in signing the form; that form contained a statement which the accused knew to be untrue; therefore the accused committed an offence. The major premise of this syllogism begs the question.

If the Magistrate's doubts were well founded, the answers may not have been filled in until after the front of the form had been signed, and if Mr. Draper's argument is correct the accused would have committed an offence if he died between his signing the front and the clerk completing the questionnaire on the back.

What the section punishes is the wilful making of a false statement, and in my opinion before a person can be guilty he must know that he is making the statement.

Mr. Draper I understood to concede that even if the clerk, to get the accused into trouble, wilfully inserted untrue answers without the knowledge of the accused, still the accused would be guilty. Such a proposition is repugnant to every principle of justice.

If a bill of exchange is signed by a person to whom it is represented that his signature is merely attesting a deed or will, the bill is a nullity, because the mind of the signer did not assent to signing the note. Criminal liability cannot attach to a signature covering a statement which the person who signs does not know to be in the document.

In *P. P. v. Sin Lee Yok*[1] Cussen J. said:—

"The point in the present case is that the person making the declaration by signing his name at the foot of a form filled in by another person did not in fact know that it contained the particular statement which is false.

"The point is then—is he to be held to have 'made' that particular statement? Is he responsible for something in the declaration which he did not know to be in it? Is he responsible for the inaccuracy, mistake, or carelessness of the person who interprets the form to him and writes in the answers—a person whose services he must make use of as he is unable to fill in the form himself—having no knowledge of English—all he does and can do is to sign his name in Chinese at the foot of the form.

"In my opinion a person does not 'make' a statement in the meaning and application of this law (section 166 (1) (a)) if he is not in fact aware that he is making that statement, making it in the sense that he signs his name at the foot of a series of questions and answers, unaware that amongst them is that particular statement.

"But I am of opinion that the onus is on the person alleging that he so signed a declaration to establish the lack of such knowledge."

With this judgment of Cussen J. I am in entire agreement.

During the argument Mr. Draper informed us that *P. P. v. Sin Lee Yok* should not have been reported, his reason, I understood, being that the Public Prosecutor's department did not approve of it. This can only mean that Magistrates are to be kept in the dark as to decisions which are binding upon them but which do not suit the prosecution.

We have noticed another case, *Lai Tin v. P. P.*, decided in November 1938, which was first reported in October 1939 in 8 M.L.J. 248, without any indication that it had been overruled by the Court of Appeal in *Cheow Keok v. P. P.* on 11th July 1939, nearly four months before *Lai Tin's* case was published, but the Court of Appeal case was not published until April 1940 in 9 M.L.J. 103; see too 1939 F.M.S.L.R. at 90.

If *Lai Tin's* case was sent to the printer before July 1939, there was ample time to stop its publication or at least to append a warning note that it had been overruled.

I entirely associate myself with the learned President's comments on the impropriety of deliberately withholding relevant decisions with a view to securing conviction.

If the Public Prosecutor thinks a decision of the High Court to be wrong he has ample powers of appeal. If he is still dissatisfied he can take steps to have the law amended but he cannot usurp the functions of the Court.

Bank of New South Wales v. Piper[4] does not help the Public Prosecutor. In that case the respondent "knew that he had not the written consent of the mortgagee and that knowledge was sufficient to make him aware that he was offending against the provisions of the Act." Nor do I think that *Dacey's* case[2] helps. Dacey knew he had a substance in his possession and so committed the offence of knowingly having in his possession an explosive substance, whether he knew the substance was explosive or not. 'Knowing' went with possession, not with the nature of the substance. The case accords with *R. v. Woodrow*[5]. *Dickens v. Gill*[3] is a case of absolute prohibition which the present case is not, but in this case Collins J. said " 'making' involves a conscious act on the part of the person who does it", and in my opinion a person does not make a statement who is not conscious that he is making it.

"When it is sought to be shown that the Legislature means to punish without requiring proof of moral guilt, such an intention must be very clearly expressed," per Hawkins J. in *Derbyshire v. Houliston*[6].

Nor do I think that *Goonatillake v. P. P. Johore*[7] helps the Public Prosecutor. In that case the appellant declared that his land contained so much tappable rubber. The appellant knew what trees he had on his estate; many of those trees were immature and untappable, and he was held to have committed an offence by declaring untappable trees to be tappable. The appellant had knowledge of his trees which he misdescribed.

I have refrained from considering the evidence because the case was argued with a view to the Court overruling *Sin Lee Yok's* case and to securing its assent to the following proposition: "liability to make a declaration is absolute and the maker is liable whether or not he knew that the declaration contained a false answer." To that proposition, for the reasons given, I cannot assent.

Had the trial been before a jury it would have been the duty of the Judge to tell the jury that they must consider the accused's evidence, that it was not incumbent on the accused to prove his innocence but that if his evidence produced a reasonable doubt of his guilt they should acquit. The learned Magistrate directed himself in this sense. He saw and heard the witnesses; he was impressed by the accused's evidence, and however much one reading the written record may be inclined towards a different conclusion, I do not consider that on the question of fact the Magistrate should be reversed.

I would dismiss the appeal.

Aitken, Ag. J.A.—In this case the charge against Ng Chong was worded as follows:—

"That you, at Kuala Lumpur on the 20th April 1940, for the purpose of obtaining under the provisions of the Road Traffic Enactment 1937 the grant of a licence to drive a public service vehicle to yourself made a statement namely that you had not since 30th April, 1939 been convicted of any offence or been bound over without conviction for an offence which statement was to your knowledge false and that you have thereby committed an offence against and punishable under section 116 of the Road Traffic Enactment, 1937."

Ng Chong was first called upon to plead to this charge on the 26th of June, 1940, and he then said nothing more than "I am guilty."

On the 22nd of July, 1940, he was called upon for a second time to plead to this charge, and he then said "I am guilty, but it (i.e. the application for a

licence to drive a public service vehicle) was not written by me." In reply to questions by the learned magistrate Ng Chong added, "I submitted that statement. It was signed by me, but I did not know what was written. I did not mention to the writer that I had not been bound over and had not been convicted. I say that I am guilty because I fixed my signature to the document."

The learned magistrate, in my opinion rightly, interpreted this second plea as a claim to be tried, and on the 12th of August, 1940, the trial commenced.

At the trial it was proved, beyond possibility of doubt:—

(a) that Ng Chong had, on the 20th of April 1940, signed the prescribed form of application for a licence to drive a public service vehicle after the form had been filled in for him by some other person;

(b) that Ng Chong had signed that form for the purpose of obtaining a licence to drive a public service vehicle;

(c) that this form contained, inter alia, a statement that Ng Chong had not, since his last application for such a licence, been convicted of any offence; and

(d) that that statement was false to the knowledge of Ng Chong at the time when he signed the form.

When the case for the prosecution was closed Ng Chong elected to give evidence on his own behalf, and then told the Court that he could not read English, that the man who filled in the form for him did so without asking him any questions, and that he did not know what were the contents of the form when he signed it.

The learned magistrate took time to consider his decision and eventually, on the 20th of September 1940, he acquitted Ng Chong on the following grounds:—

(1) that he, the learned magistrate, entertained very grave doubts as to whether Ng Chong fully understood what was written down in the form of application in reply to the questions therein set out; and

(2) that he, the learned magistrate, was bound by the decision of Cussen, J. in the case of the **Public Prosecutor v. Sin Lee Yok**[1].

As to the second of these grounds I think that he was quite right.

In my opinion this appeal raises a question of great public interest and importance, and I think it desirable to set out, first of all, the relevant provisions of the Road Traffic Enactment and of the relevant rules and forms made thereunder.

Section 90 (1), which is in Part IV of the Enactment, provides, inter alia, that "a person shall not drive a public service vehicle unless he is licensed for the purpose, and a person shall not employ any person who is not so licensed to drive a public service vehicle on a road." Sub-section (4) of the same section enacts that a licence to drive a public service vehicle may at any time be suspended or revoked by the licensing authority upon the ground that by reason of his conduct or physical disability the holder is not a fit person to hold such a licence."

Pausing here for a moment, I venture to suggest that it is of the greatest possible importance, in the general interests of the community, that persons whose conduct or physical disabilities render them unfit to drive public service vehicles should be prevented from driving such vehicles at the earliest possible moment. Let us see, therefore, how that problem is dealt with by the Public Service Vehicles (Drivers' and Conductors' Licences) Rules, 1937, which were made under section 112 of the Enactment for the purpose of carrying it into effect.

Rule 4 of those Rules provides, inter alia, that every application for a licence to drive a public service vehicle shall be made to the Licensing Authority on a form to be obtained from him on demand. I shall have something to say about that form later on.

Rule 5 provides, inter alia, that no licence to drive a public service vehicle shall be granted unless the Licensing Authority is satisfied that the applicant is a fit person to be licensed, and for that purpose the Licensing Authority may require him to provide:—

(i) evidence that he fulfils the requirements of the Enactment as to age;

(ii) a certificate from his present or last employer or a sufficient reason for failure to supply such a certificate;

(iii) (a) evidence that he is acquainted with the provisions of the Highway Code (if any) issued under section 67 of the Enactment;

(b) evidence that he can read traffic signs and directions;

(c) a medical certificate that he is not suffering from any disease or physical disability likely to interfere with the efficient discharge of his duties as a driver or to cause the driving by him of a public service vehicle to be a source of danger to the public;

(d) facilities for a practical test of his ability to drive a public service vehicle or any specified type or types of such vehicles; and

(e) evidence that he is the holder of a driving licence which shall be produced for examination by the Licensing Authority if required.

The Rules also contain provisions designed to prevent these licences from getting into the wrong hands, or remaining at large during suspension or after cancellation. I need not set those provisions out, and they are only mentioned here as showing the Rule Making Authority is most anxious that not one of such licences should be in the hands of a person in any way unfit to possess one.

Now it is perfectly clear, from what I have quoted of rule 4 above, that no one can obtain a licence to drive a public service vehicle, or a renewal of such a licence, without first of all making a written application therefor in the prescribed form. Both those forms — original application and renewal — are designed to elicit from the candidates information which is absolutely essential for the purpose of enabling the Licensing Authority to decide whether the requisite licence can safely and properly be granted. The correct and careful completion of these forms is therefore of vital importance if the general interests of the community in the proper use and control of public service vehicles are to be adequately safeguarded.

In this case it was a renewal form of application which Ng Chong signed on the 20th April, 1940, and in order to avoid overloading this judgment with detail I will confine myself to that form and those parts of it which have a direct bearing on the questions in issue.

On the face of it the printed form is addressed to the Chairman, Transport Board, F.M.S., P.O. Box 97, Kuala Lumpur, F.M.S. Next comes this printed statement:—

"I, the undersigned, hereby apply for a Licence to drive a Public Service Vehicle and I declare that to the best of my knowledge and belief the statements made overleaf are true and correct.

I enclose a photograph of myself and a postal order for $1 in respect of the fee for the licence."

Then follow:—

Usual Signature.....

Full Name.....

Address .....

Date .....

Turning the printed form over, we find seven questions set out on the left hand side, with corresponding numerals and blank spaces for the answers thereto on the right hand side. I will set out these questions and the answers thereto as they appear on the form which Ng Chong signed.

QUESTION.	ANSWER.
1. State in respect of your current licence (or, if you have no current licence, your last licence): (a) the number; (b) the date of expiry.	1. (a) 5991. (b) 30.4.40.
2. State the number of your badge.	2. 3192.
3. State name and address of present employer.	3. Name of employer Selangor Omnibus Co., Ltd. Address of employer 113 Main Street, Kepong.
4. Has there, since your last application for a licence, been any change in your physical condition such as to interfere with the efficient discharge of your duties as a driver or to cause the driving by you of a public service vehicle to be a source of danger to the public? If so, give brief particulars.	4. ..... No.
5. Do you now wish to be licensed to drive any type or types of vehicle other than those you were previously licensed to drive? If so, give particulars.	5. P.S. Vehicles.
6. (a) Are you the holder of a current motor driver's licence? (b) Is that licence limited to the driving of any particular class or description of vehicle? If so give particulars.	6. (a) Yes. (b) all heavy motor cars and motor cars.
7. Have you, since your last application for a licence, been convicted of any offence, or been bound over without conviction for an offence, or been bound over to keep the peace or to be of good behaviour? If so, give particulars, as indicated, of every such case. (This question relates to offences of any nature and not only to those connected with motoring).	7. No. (a) Description and place of Court....No. (b) Date of conviction or binding over....No. (c) Offence with which charged....No. (d) Sentence or Order of the Court....No.

I have already set out certain of the provisions of section 90 in Part IV of the Enactment, and I think it is reasonably clear that the object of the Legislature, in enacting them, was to ensure that only those persons, whose conduct and physical abilities rendered them fit and proper persons to be entrusted with the responsible job of driving public service

vehicles, should be allowed to drive them. The machinery adopted by the Rule Making Power to carry that highly important and desirable object into effect consists of the printed forms of application for a licence to drive such vehicles, one of which, and the relevant one in this case, I have set out rather more than less in extenso above..

So far I feel that I have kept on reasonably safe ground, but the next step appears to involve some little risk. Nevertheless, I venture to assert that if the Court holds that it does *not* matter so much as the hoot of a horn what an applicant signs for in one of these forms, so long as he can establish a doubt as to whether he knew precisely what he had signed for, then, in the circumstances of this country, the machinery in question has broken down entirely, and the clear object of the Legislature has been defeated.

I ask myself, more in sorrow than in anger, is it really necessary for us to defeat the object of the Legislature in this case. If it is, then I do admit that the Legislature might have used language better calculated to resist the corrosive effects of judicial interpretation. Let us therefore consider carefully the words which the Legislature did, in fact, use.

We find them in section 116 (1) (a) of the Enactment, and so far as they concern this particular case they read as follows:—

"If any person for the purpose of obtaining the grant of any licence to himself, makes any statement which to his knowledge is false, he shall be liable on conviction to a fine of one thousand dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment."

Now our Road Traffic Enactment is nothing more or less than a reproduction of the Imperial Road Traffic Act, 1930, with such changes as our local circumstances render necessary or desirable. The provisions in the Imperial Act from which the above quoted provisions of section 116 (1) (a) have been taken are to be found in section 112 (2) of the Act, and so far as material to the purposes of this case they read as follows:—

"If any person for the purpose of obtaining the grant of any licence to himself knowingly makes any false statement, he shall be liable to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding six months, or to both such imprisonment and fine."

On a comparison of the phraseology employed by the Imperial and the local draftsmen respectively, it at once becomes apparent that whereas the former used the expression "knowingly makes any false statement" the latter deliberately omitted the adverb "knowingly" and instead used the expression "makes any statement which he knows to be false." The change is obviously a deliberate one and one which was intended to effect some change in the meaning. I am therefore asking myself whether there are any local circumstances which render such a change necessary or desirable.

The answer seems to be this:— that whereas in Britain practically every person above the age of sixteen years is literate, and can make out his form of application for a licence himself, in this country the overwhelming mass of the people can neither read nor write English, and must therefore rely on some one else's services in making out the appropriate form of application for a licence. If this proposition be granted, and I think that most people would grant it, then it is easy to understand why the local draftsman left out the word "knowingly", and sought to render the mere making of a false statement an offence provided only that it was false to the knowledge of the applicant.

If I may be forgiven for saying so, I should like to express my indebtedness to learned counsel on both sides; for I thought that this appeal was exceptionally well argued. Mr. Ramani, as amicus curiae, certainly did all that could be done for Ng Chong; and I was very interested to note his statement that he could not support the dictum of Cussen J. in *Public Prosecutor v. Sin Lee Yok*[1] to the effect that in the expressions "if any person knowingly makes a false statement" and "if any person makes any statement which to his knowledge is false", the knowledge referred to is the same.

I thought that the real force in Mr. Ramani's argument lay in his contention that the mere making of a statement involves a conscious act on the part of the person who makes it, and that therefore the respondent could not be held to have made a statement which he did not know to be contained in the form he had signed. In support of this contention he cited the judgment of Cussen J. in *Public Prosecutor v. Sin Lee Yok* (supra), and a passage from the judgment of Collins J. in *Dickins v. Gill*[3]. He also drew our attention to *Ocean Accident and Guarantee Corporation Ltd. and another v. Cole*[8] where section 12 (3) of the Imperial Act was under consideration and it was held, inter alia, that the mere making of a false statement in a certificate of insurance is not enough to support a conviction under that sub-section because it must be proved, in addition, that it was false to the knowledge of the person who issued the certificate.

Personally I have not derived any appreciable assistance from the *Ocean Accident and Guarantee Corporation Ltd.* case, because it is perfectly clear that Ng Chong would be entitled to a verdict of acquittal if it is doubtful whether, in fact, he did know that the statement about no conviction since his last application was false. As there is no doubt whatever on that point, I do not propose to discuss the *Ocean Accident and Guarantee Corporation Ltd.* case any further.

This brings me back to Mr. Ramani's main contention, the force of which I have already admitted. It has caused me no small difficulty, but I have decided to reject it for three reasons.

The first is that Ng Chong did a conscious act when he obtained the requisite form of application, another conscious act when he got some other man to fill it up for him, and yet another conscious act when he affixed his signature thereto. He must have known, even if his own story be accepted in toto, that the form which he had signed contained a number of statements of some sort or other having something to do with his application for a renewal of his licence, and he also knew that the form which he signed was being sent to the Licensing Authority. In all these circumstances it seems to me only reasonable to regard Ng Chong as having made the statements contained in that form. They would not have come into existence but for him, and he was seeking to use them for his own benefit.

The second is that, in my opinion, an absolute duty lies upon every person who signs a form like this one to see that it contains only statements which he himself knows or believes to be true. Can it be suggested that a literate person, who gets some one to fill in one of these forms for him, and then signs it without taking the trouble to read it through, can escape criminal liability under section 116 (1) (a) of the Enactment by pleading that he did not fully know what it contained? I don't think such a suggestion would have much success in the Courts, and yet the literate person would have been just as unconscious of having made a false statement as Ng Chong is in this case.

The third is that any construction of section 116 (1) (a), other than that I am proposing, will enable all applicants for licences under the Enactment to put up forms full of false statements with impunity, so long as they employ some one to fill in the forms for them and take care not to discover how he does it. Surely the Legislature cannot have intended such a deplorable state of affairs, and so long as there is any reasonable alternative construction of this section which will avoid such a disaster, I think that the Courts should adopt it. As I have already indicated, in my opinion such an alternative does exist.

It seems that my learned brothers on this Court have arrived at a different opinion and one which is in harmony with that expressed by Cussen J. in *Public Prosecutor v. Sin Lee Yok.* It follows, therefore, as a matter of judicial comity, that I must be wrong, and all that I can do is to express my regret at having fallen into error. I have only ventured to express a dissenting opinion because I have been able to arrive at a clear conclusion in this case, and that in itself is a matter for self congratulation. I should like to add, however, that there is no difference of opinion whatsoever between my learned brothers and myself in regard to the efforts which have been made, during the past two or three years, to keep the Magistracy of the Federated Malay States in ignorance of decisions of the Supreme Court which have not met with the approval of the learned Public Prosecutor. In spite of judicial fallibility I think that most persons would prefer the Magistracy to be guided by our decisions rather than by the views, however indirectly expressed, of a powerful executive officer charged with the duty of bringing those who are accused of crimes and other offences to justice.

Appeal dismissed.